

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

M.A. No.60/984/2017

Date of decision: 30.08.2018

O.A. No.60/1158/2016

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

...

Tehal Singh aged 79 years, son of Shri Jagjit Singh, Tubewell Operator (Retired), Public Health Division No.5, Sub Division No.10, Sector-11, Chandigarh, R/o Village & Post Office Shakrullapur, Tehsil Kharar, District SAS Nagar, Mohali.

... APPLICANT

VERSUS

1. Union of India through the Secretary, Government of India, Department of Pension and Pensioner's Welfare, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
2. The Chandigarh Administration, Union Territory, Chandigarh through its Secretary, Department of Public Health, Chandigarh Administration, Sector-9, Chandigarh.
3. The Chief Engineer, Public Health, Chandigarh Administration, Sector-9, Chandigarh.
4. The Executive Engineer, Public Health Division No.5, Chandigarh Administration, Sector-11, Chandigarh.

... RESPONDENTS

PRESENT: Sh. Gaurav Sharma, counsel for the applicant.

None for respondent no.1.

Sh. Mukesh Kaushik, counsel for the respondent No.2 to 4.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. By means of present O.A., the applicant seeks following relief:-

"8 (ii). Issuance of an appropriate order or direction to respondent No.2 to 4 to grant the applicant benefit of military service rendered by him during the 1st National Emergency from 26.10.1962 to 09.01.1968 and the 2nd National Emergency from 03.12.1971 to 25.03.1977".

(iii). the applicant be also granted pension and all pensionary benefits that are admissible to the applicant in view of the service rendered by him with the respondents no.2 to 4."

2. Along with the O.A., the applicant has also moved an M.A. for condonation of delay of 8021 days in filing the O.A.

3. This Court at the first instance issued notice in M.A. for condonation of delay, to which the respondents have filed reply.

4. In support of the M.A., learned counsel for the applicant submitted that applicant is getting lesser pension than his entitlement and if this O.A. is allowed his pay will increase retrospectively and pension on that basis also, therefore, being a recurring cause of action, the M.A. be allowed. To buttress his claim, he placed reliance on judgment of the Hon'ble Punjab and Haryana High Court in the case of **Roshan Lal vs. State of Punjab & Ors.** Reported as 2003 (1) S.C.T.1025 and **Saroj Kumar vs. State of Punjab** Reported as 1998 (3) S.C.T. 664.

5. Sh. Mukesh Kaushik, appearing on behalf of the respondents No.2 to 4 vehemently opposed the prayer and submitted that huge delay of

21 year and 9 days cannot be condoned, therefore, the M.A. along with O.A. may be dismissed on account of delay and laches. He submitted that applicant was discharged from Army service w.e.f. on 01.10.1978 and joined the respondent department on 07.10.1978 and retired on 01.10.1985. But he did not bother to agitate the matter when he was in service and not even at the time when he retired and has filed this O.A. in 2016 only. Therefore, there is huge delay in filing the O.A.

6. On merit, he submitted that applicant is not entitled to relevant benefits in terms of notification dated 15.10.2009 (Annexure A-4), issued by Govt. of Punjab notifying Punjab Recruitment of Ex-serviceman (First Amendment) Rules, 2009, as the case of the applicant is not covered for grant of increment and further for grant of pension. He submitted that applicant did not join Military service during 2nd National Emergency during 03.12.1971 to 25.03.1977. Therefore, he is not entitled to pension in terms of para 8-B(a)(b)(i) of the same. He submitted that since applicant is in receipt of military pension, therefore, he cannot claim another pension arising out of civil service. He thus submitted that on merit also, applicant has no case.
7. Learned counsel for the applicant did not dispute applicant did not join service during the 2nd National Emergency from 03.12.1971 to 25.03.1977. He also admitted that he is in receipt of military pension. However, he submitted that he is ready to surrender military pension if the respondents allow him pension in lieu of service rendered in the department.

8. We have given our thoughtful consideration to the entire matter.
9. In the wake of above noted facts and considering recurring cause of action, we allow M.A. for condonation of delay and proceed to entertain the O.A. on merit.
10. The case of the applicant is not covered within four corners of Punjab Recruitment of Ex-serviceman (First Amendment) Rules, 2009.

Relevant portion of which reads as under:

"8-B: Period of military service rendered during Second National Emergency from 3rd December, 1971 to 25th March, 1977 shall count for increments and pension as under:-

(a) Increments- The increments for the aforesaid service shall be paid to those persons only, who joined and rendered service during the aforementioned period. This benefit will, however, be given only at the time of making first appointment on regular basis on a civil post or service under the Government. However, these increments will be taken into account when the pay of a person is subsequently fixed on account of his promotion, selection, new recruitment or revision of pay scale or otherwise; and

(b) Pension- The period of military service referred to above, shall count towards pension only in case of an appointment to a permanent post under the Government, subject to the following conditions, namely:-

(i) the person concerned should not have earned a pension under military rules in respect of the military service in question.

11. It is clear that benefit is available to only those who joined National Emergency during the period 03.12.1971 to 25.03.1977. The applicant admittedly joined only on 07.10.1978. Thus the case of the applicant is not covered by the said Rules and therefore, he cannot be granted any benefit. The applicant was engaged on daily wage basis w.e.f. 07.10.1978 and then as work-charge w.e.f. 10.02.1983. He was never regularized. Thus in that capacity, he was neither

given any increments nor pension. So pension of counting of military service rendered during 1st or 2nd National Emergency does not arise at all.

12. Accordingly, the O.A. being devoid of merit is dismissed.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 31.08.2018.
Place: Chandigarh.

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